

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Dallas Airmotive, Inc.

Respondent,

V.

International Association of Machinists
and
Aerospace Workers, AFL-CIO, District
776

Charging Party.

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Case 16-CA-192780

RESPONDENT DALLAS AIRMOTIVE, INC.'S
EXCEPTIONS TO ALJ'S DECISION

Dallas Airmotive, Inc. (Respondent), pursuant to Section 102.46 of the Board's Rules and Regulations, takes exception to the Decision of the Administrative Law Judge, as set forth below. The specific grounds and authorities in support of the exceptions are set forth in the accompanying brief.

1. Respondent excepts to the Administrative Law Judge's finding that "Almost all of the relocated Forest Park employees retained the same job duties as before and with the same supervision." The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. (JD Page 3, Lines 24-5).
2. Respondent excepts to the Administrative Law Judge's finding that "Huddleston stated the Forest Park employees who transferred to Heritage Park or Love Field were no longer union members." to the extent that such employees subsequently may have been included in the finding that the union had a majority

of support at the DFW Center after consolidation of facilities. (JD Page 5, Lines 36-38).

3. Respondent excepts to the Administrative Law Judge's finding that "At the hearing Respondent did not present all bargaining notes for these sessions."
The above cited finding has no basis in the record and no relevant inference can be drawn from the finding. (JD Page 6, Lines 24-25).
4. Respondent excepts to the Administrative Law Judge's finding that "Respondent assumed the parties 2015 Forest Park Closure Agreement applied, despite the incomplete information on which the 2015 agreement was based." The above cited finding disregards the record evidence that the union was informed of the lack of certain information but the union demanded that the agreement be negotiated and put in place in any case. (JD Page 10, Lines 15-17).
5. Respondent excepts to the Administrative Law Judge's finding that "Based upon these notes and the listed participants, I infer that Respondent still had not notified Huddleston about the transfers ..." The above cited finding incorrectly draws the inference that Huddleston was unaware of transfers of Forest Park employees to DFW Center. (JD Page 11, Lines 25-26).
6. Respondent excepts to the Administrative Law Judge's finding and reliance on "Huddleston testified that he would have not agreed to the Forest Park closure agreements had he known Respondent intended to move approximately 90% of the Forest Park bargaining unit to another location that was only a few miles away." Huddleston also admitted that the union would not represent Forest Park employees that were transferred to Heritage Park or Love Field were the

evidence shows that those facilities were both within that same distance. (JD Page 12, Pages 39-42).

7. Respondent excepts to the Administrative Law Judge's finding that "At some point Allen called Lodge 776 "Immoral, unethical and un-American."" to the extent that such finding is not probative of any issue relevant to this matter. (JD Page 14, Lines 6-7).
8. Respondent excepts to the Administrative Law Judge's finding that "A week later, Daniel sent to Huddleston an email stating that it would not process the grievance until the issues with Board were resolved." The above cited finding disregards the record evidence that the union agreed to delay processing of the grievance pending the resolution of the instant case. (JD Page 16, Lines 33-35).
9. Respondent excepts to the Administrative Law Judge's finding that "Daniel's claim that in early June 2018, the percentage of employees at DFW Center from Forest Park was between 50 to 51 percent was not correct." The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. (JD Page 17, Lines 1-2).
10. Respondent excepts to the Administrative Law Judge's finding that "Respondent did not notify or bargain with Lodge 776 about these changes." The above cited finding disregards the record evidence that the union agreed to the changes in the 2015 Forest Park Shutdown Agreement as subsequently found by the Administrative Law Judge. (JD Page 17, Lines 31-32 & JD Page 29, Lines 22-24).

11. Respondent excepts to the Administrative Law Judge's finding that "The test is applied on the date when the transfer process is "substantially complete." The above cited test was not properly applied nor explained and the apparent conclusion is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. (JD Page 19, Line 46).
12. Respondent excepts to the Administrative Law Judge's finding that "the date of substantial completion determines when Respondent should have recognized and bargained with Lodge 776. [footnote omitted] That time is January 13, 2017 and no later." The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. At that time, transfers subject to the 2015 Shutdown Agreement, were ongoing and not complete. (JD Page 21, Lines 36-38).
13. Respondent excepts to the Administrative Law Judge's finding that "For the numerous reasons stated, I find it unnecessary to rely upon the contract bar argument. However, should I be found incorrect about Lodge 776 waiving its rights to set terms and conditions of employment upon moving, the contract bar would apply as stated in *NLRB v. Rock Bottom Stores, Inc.*" The issue is not if there was a contract of a stated duration to bar an election. The issue is whether there was a contract at all to bar an election. (JD Page 21, FN 26)
14. Respondent excepts to the Administrative Law Judge's finding that "By early January 2017, the relocated Forest Park bargaining unit became the majority of the employees at DFW Center and has remained that way." The above cited

finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. At that time, transfers were ongoing and were not complete. When complete, employees from Forest Park made up a minority. (JD Page 22, Lines13-15).

15. Respondent excepts to the Administrative Law Judge's finding that "As discussed in *Rock Bottom*, Respondent's reliance upon *Gitano* for this portion of the analysis is not applicable." This finding seeks to distinguish between a partial relocation in *Gitano* and a complete relocation in *Rock Bottom*. Yet the timing used for evaluating majority status was in the middle of the transition of employees, not at the completion of a total relocation. Further, the standard applied is improper. (JD Page 22, Lines 16-17).

16. Respondent excepts to the Administrative Law Judge's finding that "For the bargaining unit transferring from Forest Park, the collective bargaining agreement did not expire until March 2018, well over a year after a majority of the transfers occurred." The Forest Park collective bargaining agreement never applied to the employees at DFW Center. The employees who transferred to DFW Center were, by agreement with the union, subject to the terms and conditions applicable at that facility. (JD Page 22, Footnote 26).

17. Respondent excepts to the Administrative Law Judge's finding that "Beyond the relocation of the unit Respondent does not prove circumstances that demonstrate a significant change for the Forest Park Employees." The above cited finding is contrary to the record testimony/evidence as a whole and the

rational inferences to be drawn from such record testimony/evidence. (JD Page 23, Lines1-2).

18. Respondent excepts to the Administrative Law Judge's finding that "I therefore find that Respondent relocated the Forest Park bargaining unit as a whole with the same duties and at the same time found an opportunity to "rid itself of the union" and its obligations under the collective bargaining agreement with an unlawful withdrawal of recognition." The obligations under the collective bargaining agreement remained in place at Forest Park. The 2015 Forest Park Closure Agreement waived the application of those terms and conditions at DFW Center. (JD Page 23, Lines 16-19).

19. Respondent excepts to the Administrative Law Judge's finding that "Huddleston did not pursue Lodge 776's demand for recognition for movement of employees does not constitute a waiver, particularly in light of Respondent's contention that it did not know whether the bargaining unit would exist at any given facility." The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. Huddleston's demand that a Closure Agreement be bargained short of complete information constitutes the waiver. The evidence is not contradicted that Respondent disclosed to Huddleston that it did not know exactly when or where the employees would be transferred. The union persisted in negotiating the 2015 Closure Agreement. (JD Page 23, Lines 32-35).

20. Respondent excepts to the Administrative Law Judge's finding that "Where an employer either misleads a union or purposely keeps it uninformed about

relocation, it cannot conclude that the union waived its rights to represent the bargaining unit.” This inference that Respondent somehow mislead or purposely kept the union uninformed is contrary to the record testimony and the rational inferences to be drawn from the record testimony/evidence. (JR Page 23, Lines 37-38).

21. Respondent excepts to the Administrative Law Judge’s finding that

“Respondent’s change in the terms of the 2015 Closure Agreement constitutes a unilateral change as Respondent did not contact Huddleston.” Respondent applied all of the relevant terms of the 2015 Closure Agreement and there is no evidence of record to the contrary. (JD Page 24, Lines 1-2).

22. Respondent excepts to the Administrative Law Judge’s finding that “In the 2015 negotiations, Huddleston did not push his demands for recognition at the new facility to impasse; Respondent stated reasons for not agreeing to recognition at the time were its uncertainty in where Forest Park employees would be moved in the future and did not want to risk an unlawful agreement. This does not a waiver make as it is not clear and unmistakable and Respondent’s position about transfers changed so frequently.” The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. During bargaining, Respondent’s position never changed; it did not know where the Forest Park employees would be transferred. The union insisted, however, that the closure agreement be negotiated. The union, as found by the Administrative Law Judge, entered in to

the 2015 Shutdown Agreement with input and consent. There is no evidence to the contrary. (JD Page 24, Lines 8-13 and Page 29, Lines 22-27).

23. Respondent excepts to the Administrative Law Judge's finding that "In mid-2016, when Respondent made its decision to move the entire Forest Park functions to DFW Center, the situation constituted changed circumstances and required Respondent to notify and, upon, request, bargain." The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. During bargaining, Respondent's position never changed; it did not know where the Forest Park employees would be transferred. The union insisted, however, that the closure agreement be negotiated. Respondent followed that agreement. There is no evidence to the contrary. (JD Page 24, Lines 15-17).

24. Respondent excepts to the Administrative Law Judge's finding that "In doing so, Respondent precluded meaningful bargaining about the effects of transferring all bargaining unit employees to a single location, DFW Center, instead of dispersing employees between Heritage Park and Love Field." The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. During bargaining, Respondent's position never changed; it did not know where the Forest Park employees would be transferred. The finding was made that the union was informed the employees would be transferred somewhere in the Dallas Fort Worth Metroplex. The union insisted, however, that the closure agreement be negotiated. Respondent negotiated the 2015 Shutdown Agreement and followed

that agreement. There is no evidence to the contrary. (JD Page 24, Lines 30-33).

25. Respondent excepts to the Administrative Law Judge's finding that "As Local Lodge 776 did not include specific language to limit the Forest Park bargaining unit to only that location, it is not a waiver of its representational rights for the Forest Park unit at DFW Center." The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. There is specific language limiting the Forest Park bargaining unit to only that location. (JD Page 24, Lines 41-43).

26. Respondent excepts to the Administrative Law Judge's finding that "The official bargaining representative, Huddleston and Lodge 776, had no say in agreeing to "at-will" language and Respondent admittedly did not notify Huddleston." The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. The nature of the employment where the employees were transferred had been negotiated by Huddleston and Lodge 776 in the 2015 Shutdown Agreement – the location where the employees transferred would apply. (JD Page 24, Lines 49-50).

27. Respondent excepts to the Administrative Law Judge's consideration of the issue of accretion into the bargaining unit. Expansion of the bargaining unit via accretion was not plead by General Counsel, denying Respondent due process and appropriate notice of the remedy sought, nor could the issue be fully tried

given its lack of disclosure. (JD – Pages 25-28) (REFERENCE TO COMPLAINT).

28. Respondent excepts to the Administrative Law Judge's consideration of "whether Respondent had a well-defined plan to move in the remaining employees from Heritage Park and Love Field." The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. The complexity and size of the consolidation of Respondent's operations did not lend itself to a simple approach to the consolidation of operations. Further, the Administrative Law Judge ultimately found that Respondent's plan was sufficient to consolidate a substantial portion of the work groups and then to apply accretion standards for all but an inappropriately small group of transferred employees. (JD – Page 26 Lines 43-44).

29. Respondent excepts to the Administrative Law Judge's finding that "The remainder of the accretion analysis therefore takes place in January 2017, when Respondent refused to bargain with Lodge 776." Setting the analysis time frame in January 2017 disregards the terms of the 2015 Shutdown Agreement which contemplates that it would be in place through the entirety of the movement of employees out of Forest Park. Such moves continued well into late 2017, along with movement of employees from the other locations into DFW Center. Further, employees were accreted into the bargaining unit that transferred well after January 2017. The Administrative Law Judge's analysis is foundationally improper as she found accretion appropriate in January 2017 and then accreted

employees who did not transfer into DFW Center until well over a year later. (JD – Page 27, Lines 11-12).

30. Respondent excepts to the Administrative Law Judge's finding that

"... Respondent did not have a well-defined plans regarding moving employees from other locations when Respondent unlawfully withdrew recognition in January 2017." The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. (JD Page 27, Lines 9-11).

31. Respondent excepts to the Administrative Law Judge's finding that "Logically, the former Heritage Park employees had to share supervision with the former Forest Park employees because Respondent admitted that 60 percent of the Forest Park supervisors were still in position." The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. Just as logically is that a higher percentage of supervisors from Heritage Park or Love Field went to DFW Center. This logic has no factual basis in the total number of supervisors at DFW Center or the ultimate community of interest evaluation. (JD Page 27, Lines 38-40).

32. Respondent excepts to the Administrative Law Judge's conclusion of law finding the appropriate unit as " All production, maintenance and warehouse employees located at Respondent's Forest Park ad DFW Center facilities, excluding production employees in the Honeywell TFE line, all other employees, guards and supervisors as defined in the Act." The above cited conclusion of law was contrary to an earlier finding that Honeywell product line employees and Pratt

and Whitney product line employees do not share an overwhelming community of interest with the Forest Park employees....” Although the Administrative Law Judge submitted an Errata on February 12 that struck the reference to the Pratt and Whitney product line, either way it is inconsistent with the finding that Respondent had no plan or time table for full integration or that the “evidence is insufficient to prove an overwhelming community of interest for the engine product lines.” All product lines, save one, were accreted by the Decision. Both rulings are flawed. (JD Page 28, Lines 9-13 and Page 30, Lines 42-45).

33. Respondent excepts to the Administrative Law Judge’s conclusion of law finding “On January 13, 2017, Respondent unlawfully withdrew recognition and since then, has refused to bargain with District Lodge 776.” The above cited finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. (JD Page 30, Lines 47-48).

34. Respondent excepts to the Administrative Law Judge’s conclusion of law finding “The above unfair labor practice affects commerce as stated in the Act.” The above cited finding of an unfair labor practice is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. (JD Page 31, Line 1).

35. Respondent excepts to the Administrative Law Judge’s remedy ordering Respondent to bargain with Lodge 776. The above cited remedy is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. (JD Page 31, Lines 7-11).

36. Respondent excepts to the Administrative Law Judge's Conclusions of Law and Order finding the appropriate unit as "All production, maintenance and warehouse employees located at Respondent's Forest Park and DFW Center facilities, excluding production employees in the Honeywell TFE line, all other employees, guards, and supervisors as defined in the Act." In addition to this remedy not being sought by General Counsel in the Complaint, the finding is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. Further, the findings made by the Administrative Law Judge do not support such a finding and is intrinsically flawed. (JD - Page 30, Lines 39-44 and Page 31, Lines 37-42).

37. Respondent excepts to the Administrative Law Judge's proposed remedy ordering Respondent to post a notice associated with this matter. The above cited remedy is contrary to the record testimony/evidence as a whole and the rational inferences to be drawn from such record testimony/evidence. (JD Page 31, Lines 13-23).

DATED this 22nd day of February 2019.

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**ATTORNEYS FOR RESPONDENT,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served this 22nd day of February, 2019, to all counsel of record via electronic filing and via email.

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